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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

EMMANUEL CULALA SANTOS)	CASE NO.: 13-05225-CL7
MA RUBY ZAFRA SANTOS,)	
)	OPPOSITION TO TRUSTEE'S OBJECTION TO
Debtors,)	DEBTORS' CLAIM OF EXEMPTIONS
)	
vs.)	Date: September 16, 2013
)	Time: 10:00a.m.
LESLIE T. GLADSTONE,)	Dept: 5, Rm 318
)	
Chapter 7 Trustee.)	
)	
)	

Emmanuel and Ma Ruby Santos (hereinafter referred to as "Debtors"), by and through their counsel of record, hereby oppose the Trustee's Objection to Debtors' Claim of Exemptions on the following grounds:

Statement of Facts

1. Debtors filed their Chapter 7 bankruptcy case on May 20, 2013 and were assigned case number 13-05225-CL7.
2. Prior to filing, Debtors opened a Union Bank IRA account with an initial deposit of \$5,000.00 on May 2, 2013.
3. On Schedule B, Debtors disclosed the following retirement accounts:
 - a. Sharp Saver DB Plan (\$23,885.33)
 - b. Sharp Saver DC Plan (\$56,708.30)
 - c. Union Bank Traditional IRA (\$5,000.00)
4. Debtors provided the Trustee with evidence of the Union Bank IRA deposit well before the 341(a) creditors meeting as part of the guideline documentation.

- 1 5. Debtors attended their 341(a) meeting of creditors on June 13, 2013.
- 2 6. Trustee Gladstone concluded the meeting without a continuance and filed an
- 3 "Initial Report & 341 Meeting Held and Concluded" on June 18, 2013.
- 4 7. On July 11, 2013, the Trustee filed her objection to Debtors' claim of
- 5 exemptions, specifically objecting to "any eve-of-bankruptcy contributions that
- 6 exceed the maximum contribution limit for retirement plans."
- 7 8. Debtors have provided the Trustee with pre-filing account statements for all
- 8 three (3) retirement accounts at issue.
- 9 9. At the Trustee's request, Debtors are gathering the Sharp Saver retirement
- 10 account statements for the period of January 1, 2011 to December 31, 2012 and
- 11 will provide to the Trustee upon receipt.

12 Argument

13 A. Eve of Bankruptcy Conversions

14 The 9th Circuit has long held that conversion of nonexempt assets to exempt assets
15 on the eve of bankruptcy does not constitute a fraudulent transfer absent extrinsic
16 evidence of fraud. *In re Stern* (9th Circ. 2003) 345 F.3d 1036.

17 While it is not clear under what code section the Trustee brings their objection,
18 typically such objections are brought under 11 U.S.C. § 522.

19 "Section 522 continues to adopt the position favorably viewed by the Code drafter
20 that the mere conversion of nonexempt property into exempt property, without
21 fraudulent intent, does not deprive the debtor of exemption rights in the converted
22 property." 4 *Collier on Bankruptcy* ¶522.08[5].

23 B. Maximum Contributions to Retirement Plans

24 The sole issue raised by the Trustee is whether Debtors contributed more than the
25 allowable amounts to each of these retirement accounts.

26 a. Defined Benefit Plan

- 27 i. Per Internal Revenue Code § 415(b)(1), for 2012 the annual limitation
- 28 for defined benefit plans is the lesser of:

1 1. 100% of the participant's average compensation for his or her
2 highest 3 consecutive calendar years, or

3 2. \$200,000

4 ii. For 2013, the annual benefit cannot exceed the lesser of:

5 1. 100% of the participant's average compensation for his or her
6 highest 3 consecutive calendar years, or

7 2. \$205,000

8 iii. Wife's gross income at Sharp Coronado Hospital was \$104,271 in 2011
9 and \$107,466.75 in 2012. With a current Sharp Saver Defined Benefit
10 (DB) balance of \$23,885.33, it is very likely that the 2011-2012
11 retirement statements will prove that the contributions during that
12 time period do not exceed allowable limits. Thus, the exemptions
13 applied to this account under CCP §703.140(b)(10)(E) are valid and
14 the entire account is exempt from liquidation.

15 b. Defined Contribution Plan

16 i. Per Internal Revenue Code § 415(c)(1), the limitation for defined
17 contribution plans increased from \$50,000 in 2012 to \$51,000 in 2013.

18 ii. Given Wife's gross income levels, a current Sharp Saver Defined
19 Contribution (DC) balance of \$56,708.30, and the fact she has worked
20 at Sharp for over seven (7) years, Debtor is confident that the
21 requested statements will reveal that her contributions fell well
22 within the allowable limits. Therefore, this account is also
23 properly and completely exempted.

24 c. IRA

25 i. The limit on annual contributions to an Individual Retirement
26 Arrangement (IRA) rose to \$5,500 in 2013, up from \$5,000 in previous
27 years. IR-2012-77.

28 ii. As Debtors contributed \$5,000 into the Union Bank IRA prior to
filing, it is properly exempted.

Conclusion

For the foregoing reasons, Debtors respectfully request the Court overrule the Trustee's Objection to Claim of Exemptions with respect to the Debtors' Sharp Saver DB/DC and Union Bank IRA accounts.

Dated: August 9, 2013

/s/ Ahren Tiller
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